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SJC-13113

SONY VILBON vs. COMMONWEALTH.

July 1, 2021.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Sony Vilbon, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

Vilbon has been charged in a complaint with assault and battery on a family or household member, in violation of G. L. c. 265, § 13M (a), and assault and battery on a pregnant person, in violation of G. L. c. 265, § 13A (b). He is also subject to a G. L. c. 209A order, stemming, it appears, from the same incident that led to the assault and battery charges. In his G. L. c. 211, § 3, petition, he stated that he was "challeng[ing] the lawfulness" of both the c. 209A order and the criminal charges. It does not appear that he sought to challenge the criminal charges in the trial court -- he did not file a motion to dismiss the charges or take any other action -- prior to filing his petition in the county court; nor does it appear that he appealed from the issuance of the c. 209A order. The single justice denied the petition without a hearing.

Vilbon has now filed what appears to have been intended as a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). Technically speaking, rule 2:21 does not apply in this situation because Vilbon is not challenging any interlocutory rulings of the trial court in either the criminal case or the c. 209A case. It is nonetheless clear that he is not entitled to review pursuant to G. L. c. 211, § 3. In the criminal case, it appears that Vilbon is seeking to have the charges dismissed. That is something that

he must seek to do in the trial court in the first instance. As for the c. 209A case, the proper avenue for review of the c. 209A order is in an appeal to the Appeals Court, not via a petition pursuant to G. L. c. 211, § 3. See, e.g., Zullo v. Goguen, 423 Mass. 679, 681 (1996).¹

The single justice did not err or abuse his discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Sonny Vilbon, pro se.

¹ The single justice did not separately address the petitioner's claim concerning the G. L. c. 209A order. That is inconsequential. Given the adequate alternative remedy, the petitioner was not entitled to review of that claim pursuant to G. L. c. 211, § 3.